

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

RECEIVED
CLERK GREENVILLE, SC
2016 DEC 29 PM 4:36

Wanda Gavin,

Plaintiff,

C/A No: 7:16-cv-02082-TMC-JDA

vs.

Bank of America N.A. Hutchens Law Firm.,
John B. Kelchner, John S. Kay, Ashley Z.
Stanley, U.S. Bank Trust N.A.

Defendant,

**PLAINTIFF OBJECTION TO THE MAGISTRATE JUDGE
REPORT AND RECOMMENDATION**

Under 28 U.S.C. § 636(b)(1)(C) and Rule 72.3(b) of the Rules of this Court, Plaintiffs respectfully submit the following objections to certain of the Magistrate Judge's Report and Recommendation, issued on December 14, 2016. Plaintiff withdraw Federal Debt Collection Practices act claim/FDCPA and South Carolina Consumer Protection Code(SCCP) claim against the Defendant(s) but certainly object to the proposed deny of the First Amended Complaint which includes two Telephone Consumer Protection Act claims against Bank of America N.A.

I. Telephone Consumer Protection Act

Plaintiff amended complaint allege violations of the TCPA, and recommended that's its motion be granted. TCPA is a remedial statute that was passed to protect consumers from the unwanted automated telephone calls. "Gager v. Dell Fin. Servs., LLC 727 F. 3d 265, 271 (3d Cir. 2013)). The TCPA makes it unlawful for any person "to make any call

(other than a call made for emergency purposes or made with the prior express consent of the called party) using an automatic telephone dialing system or an artificial or prerecorded voice to any telephone assigned to a cellular telephone service or which the called party is charged for calls. 47 U.S.C. 227(b)(1)(A)(iii).

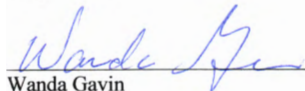
Here in her proposed Amended Complaint, Plaintiff alleges from March 3, 2015 thru March 11, 2015, Bank of America made 12 phone calls to the Plaintiff cell phone without my express consent in writing or verbally. (*see exhibit A*) Defendant has demonstrated willful or knowing non-compliance with 47 U.S.C. 227 (b) (1)(A)(iii) by using an automatic telephone dialing system to call the Plaintiff's cell phone. Plaintiff provided the court with itemization of accounts (*see exhibit B*), showing Bank of America left twelve recorded messages using a ATDS or artificial or prerecorded voices on the Plaintiff's cellular phone, and those calls were made to collect on alleged that she don't owe. Defendant made several phone calls within a 24hr period used different phone numbers using a automatic dialer with the attempt to collect on a debt that I don't owed. Accordingly, Plaintiff motion to amend the complaint with added two TCPA claims against Bank of America N.A. should be granted.

Conclusion

For the foregoing reasons, the Court should reject the Magistrate Judge's Report and Recommendation to deny the Plaintiff Amended complaint with the two Telephone Consumer Practices Act claims or Plaintiff ask the court for opportunity for Motion for Leave to File 2nd Amended complaint or grant such other relief as this COURT deems just and proper.

DATED: December 27, 2016

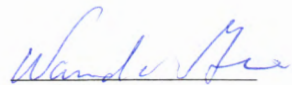
Respectfully submitted

A handwritten signature in blue ink, appearing to read "Wanda Gavin", is written over a horizontal line.

Wanda Gavin
300 Marion Ave
Gaffney SC 29341

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing response of Plaintiff Objection to Magistrate Judge's Recommendations & Report was served by U. S. mail, postage prepaid, this December 27, 2016 upon the following:


Wanda Gavin

Hutchens Law Firm
240 Stoneridge Drive
Columbia SC 29210

McGuire Woods LLP
201 N Tryon St #26
Charlotte NC 28202